

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

NO. 19 CV _____

STATE OF NORTH CAROLINA *ex rel.*
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

JUSTIN L. HARTMANN, Individually, and
CANARY DATE SCULPTING INC. d/b/a
Canary Tree Service,

Defendants.

COMPLAINT**MOTION FOR TEMPORARY
RESTRAINING ORDER****MOTION FOR PRELIMINARY
INJUNCTION****INTRODUCTION**

This is an action by the State of North Carolina to enforce its laws against price gouging during a state of emergency and unfair and deceptive trade practices.

Plaintiff State of North Carolina, on relation of Joshua H. Stein, Attorney General ("the State"), brings this action against defendants JUSTIN L. HARTMANN, individually, and CANARY DATE SCULPTING INC. d/b/a Canary Tree Service ("defendants"). The State alleges that defendants price gouged homeowners in North Carolina for tree removal services in the wake of Hurricane Florence, in violation of N.C. Gen. Stat. § 75-38, and engaged in unfair and deceptive trades practices, in violation of N.C. Gen. Stat. § 75-1.1. The State seeks temporary, preliminary, and permanent injunctive relief against defendants, together with restitution for the victims, civil penalties, attorneys' fees, and other relief.

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WAKE COUNTY, N.C.
BY: *W*

PARTIES

1. The State of North Carolina, acting on the relation of its Attorney General, Joshua H. Stein, brings this action pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

2. On information and belief, defendant Justin L. Hartmann resides at 631 Hampton Downs Court, Saint Johns, Florida. On information and belief, defendant Hartmann at all times relevant to this Complaint was an officer or managing agent of defendant Canary Date Sculpting Inc., and represents himself to be its “President, Owner, Operator.” He is also the corporation’s registered agent. On information and belief, his acts or practices alleged herein were done as an officer or managing agent of defendant Canary Date Sculpting Inc.

3. Defendant Canary Date Sculpting Inc. is a Florida corporation, with its principal place of business at 440 Honeycomb Way, Jacksonville, Florida. Defendant Canary Date Sculpting Inc. is not registered with the North Carolina Secretary of State’s Office as a foreign corporation authorized to do business in North Carolina. Defendant Canary Date Sculpting Inc. does business as “Canary Tree Service.” (Affidavit of Maria Harkley, **State’s Exhibit 7**)

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15 because the acts or practices alleged herein are in or affecting commerce in North Carolina.

5. The Court has personal jurisdiction over defendants because their acts or practices alleged herein occurred in the State of North Carolina.

6. Venue is proper in Wake County pursuant to the Attorney General’s selection under N.C. Gen. Stat. § 75-14.

FACTUAL ALLEGATIONS

I. Background

7. On September 7, 2018, North Carolina Governor Roy Cooper declared a state of emergency because Hurricane Florence posed an “imminent threat” to North Carolina. The declaration, which covered various counties including New Hanover, specifically noted that North Carolina’s price gouging statute, N.C. Gen. Stat. § 75-38, was in effect. (The declaration is attached as **State’s Exhibit 1**.) This state of emergency was in effect at all times relevant to this Complaint.

8. Upon information and belief, in the aftermath of Hurricane Florence, defendants, who are based in Florida, traveled to North Carolina and engaged in a pattern of charging North Carolina consumers excessive amounts for tree removal work, in violation of North Carolina’s price gouging statute, as demonstrated by the consumer experiences detailed below.

9. In addition to charging excessive amounts for the work, defendants fail to abide by North Carolina’s law requiring sellers of consumer services to inform buyers of their right to cancel an off-premises sale within three days. N.C. Gen. Stat. § 14-401.13. An off-premises sale includes a “sale . . . of consumer services with a purchase price of twenty-five dollars (\$25.00) or more . . . in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer’s agreement or offer to purchase is made at a place other than the place of business of the seller.” N.C. Gen. Stat. § 14-401.13(c)(1). When such a sale is made, the seller is required by law to provide the buyer a “Notice of Cancellation,” which contains language specified in the statute, including: “You may cancel this transaction, without any penalty or obligation, within three business days from the above date.” N.C. Gen. Stat. § 14-401.13(a)(2). The seller is also required to provide verbal notice to the buyer of the right to cancel. As shown below, defendants’ pattern is to not provide such notices.

II. The Romano and Heuer Homes

10. On or about September 14 or 15, 2018, winds from Hurricane Florence caused a large oak tree to fall in the yard of Nicholas Romano and his wife in Wilmington, North Carolina. (A photograph of the fallen tree is at **Attachment 1** to the Affidavit of Nicholas Romano, **State's Exhibit 2**.) The tree fell toward the property of the Romanos' neighbors, the Heuers, hitting the Heuers' fence and damaging three smaller trees on the Heuer property. (A photograph of the trees damaged on the Heuer property is at **Attachment 2** to the Affidavit of Michael Heuer, **State's Exhibit 3**.)

11. On or about September 17, 2018, Mr. Romano asked a local tree removal specialist whose services he had used in the past if the specialist could remove the tree from Mr. Romano's property, and the specialist said he would help out. Later that day, the tree specialist brought a man named Hunter Carle—who was from a different tree company, Canary Tree Service—to Mr. Romano's home, introduced him to Mr. Romano, said Mr. Carle would take care of the tree work, and then left. Mr. Romano was not expecting this new person from a different tree company to come to his home, but he spoke to him because he knew the person who made the introduction.

12. Upon information and belief, at all times relevant to this complaint, Mr. Carle acted as an agent of Defendant Canary Date Sculpting Inc. d/b/a Canary Tree Service and of Defendant Justin L. Hartmann, and acted under the direction of, or with the approval of, these defendants.

13. Mr. Carle first quoted the job to remove the above-described trees at \$10,000.00, then lowered his proposal to \$9,000.00 when Mr. Romano did not agree.

14. Mr. Carle and Mr. Romano then went to speak with Mr. Heuer about splitting the cost of the work, and the three agreed that Mr. Romano and Mr. Heuer would each pay \$4,500.00 and receive separate invoices.

15. Mr. Romano and Mr. Heuer each provided Mr. Carle with checks for \$1,500.00. (Copies of the deposited checks are at **Attachment 3** to Romano's Affidavit, **Exhibit 2**, and at **Attachment 3** to Heuer's Affidavit, **Exhibit 3**, respectively.)

16. In addition to the above-described work, Mr. Carle agreed to remove a small twin birch that was leaning toward the Romano home for an extra \$500.00 that Mr. Romano would pay, bringing his total to \$5,000.00. (A photograph of the birch is at **Attachment 4** to Romano's Affidavit, **State's Exhibit 2**.)

17. All of the above-described tree work was done on or about September 18, 2018. The work crew from Canary Tree Service consisted of three men. They used a crane, a bobcat, and chainsaws to do the work. They arrived at around 11:00 a.m. and worked until about 3:30 or 4:00 p.m., with a 20 minute lunch break. Accordingly, the crew worked for at most four hours and forty minutes, which is 4.67 hours. Three men working for 4.67 hours results in 14 man-hours.

18. Canary Tree Service charged a total of \$9,500.00 for these 14 man-hours, which results in a rate of \$678.57 per man-hour. This charge was excessive. (Affidavit of Basil Camu, **State's Exhibit 6**)

19. The invoices from Canary Tree Service to Mr. Romano and Mr. Heuer provide the names "Justin Hartmann" and "Hunter Carle" as the "CTS Representative[s]," and state that Mr. Hartmann is the "President, Owner, and Operator" and that Mr. Carle is the "Sales Manager." (Copies of the invoices are at **Attachment 6** to Romano's Affidavit, **Exhibit 2**, and at **Attachment 6** to Heuer's Affidavit, **Exhibit 3**, respectively.)

20. Mr. Romano paid his \$3,500.00 balance by check, and Mr. Heuer paid his \$3,000.00 balance by check. Those deposited checks are endorsed by a stamp bearing the name "Canary Date Sculpting Inc. DBA Canary Tree Service." (Copies of the deposited checks are at

Attachment 5 to Romano's Affidavit, **Exhibit 2**, and at **Attachment 5** to Heuer's Affidavit, **Exhibit 3**, respectively.)

21. Included on Mr. Romano's invoice is a line item described as "Neighbor across street flush cut tree and put to curb," at a charge of \$750.00. This line item and the corresponding charge is struck through because that work was never done by Canary Tree Service. When Mr. Romano was initially arranging the work with Canary Tree Service, his neighbor Chris Claffey had requested that Canary Tree Service remove from his property a very small holly tree measuring about 4 inches in diameter. Mr. Romano agreed to have that work added to his bill, and Mr. Claffey would reimburse Mr. Romano for it. This is why Mr. Carle wrote \$750.00 for that work on Mr. Romano's invoice. However, when Mr. Claffey learned that the charge would be \$750.00, he decided not to have Canary Tree Service do that work. Therefore, the line item was struck through on the invoice and not paid.

22. Mr. Romano later cut up and hauled off Mr. Claffey's holly tree using a \$119.00 Ryobi chainsaw he purchased from Home Depot. This work took Mr. Romano less than one hour. Accordingly, Mr. Carle and Canary Tree Service had offered to charge \$750.00 for less than one hour of simple chainsaw work.

23. Upon information and belief, the demands for payments from Mr. Romano and Mr. Heuer, and the offer to do the job on Mr. Claffey's property, were done with the knowledge and intent to charge an unreasonably excessive price under the circumstances for tree removal work that directly resulted from the emergency (Hurricane Florence's landfall) that prompted the Governor's declaration of a State of Emergency.

24. Mr. Romano and Mr. Heuer neither received a three-day right to cancel notice nor signed a three-day right to cancel waiver in connection with the above-described services.

Through the letters at **Attachments 2 and 3** to the Affidavit of Maria Harkley, **State's Exhibit 7**, Mr. Romano and Mr. Heuer exercise their rights to cancel the transaction with Canary Tree Service by causing these letters to be delivered to Canary Tree Service in connection with service of this Complaint.

III. The Griffith Home

25. Shortly after Hurricane Florence passed through the Wilmington, North Carolina, area, John Griffith was approached at his home in nearby Hampstead, North Carolina, on or about September 20, 2018, by a man with a crew of workers. Mr. Griffith thought they were with FEMA because the sign on the side of their truck said "Disaster Recovery Team." He later came to understand that the man was actually defendant Hartmann, owner of Canary Tree Service.

26. Defendant Hartmann told Mr. Griffith that he would remove the portions of a neighbor's trees that had fallen partially in the Griffiths' yard if Mr. Griffith would let him place his crane on their driveway.

27. Mr. Griffith agreed and signed a waiver of liability that defendant Hartmann presented. (A copy of the waiver is at **Attachment 1** to the Affidavit of John Griffith, **State's Exhibit 4**.)

28. Defendant Hartmann also offered to remove two loblolly pine trees on the Griffiths' property that were leaning toward their house. (**Attachment 2** to Griffith's Affidavit, **State's Exhibit 4**, contains pictures of those trees while standing as well as their stumps after being cut down.)

29. Unfamiliar with the market price for tree removal, Mr. Griffith agreed when defendant Hartmann offered to remove the two pine trees for \$4,500.00.

30. After seeing that it took five to six men using chainsaws and a Bobcat about one hour to cut down the two pine trees and place the debris at the curb, Mr. Griffith realized that \$4,500.00 was too high a price. (A copy of the invoice, marked “paid in full,” is at **Attachment 3** to Griffith’s Affidavit, **State’s Exhibit 4**.)

31. \$4,500 divided by six man-hours equals a rate of \$750 per man-hour. This charge was excessive. (Affidavit of Basil Camu, **State’s Exhibit 6**.)

32. Mr. Griffith neither received a three-day right to cancel notice nor signed a three-day right to cancel waiver in connection with the above-described services. Through the letter at **Attachment 4** to the Affidavit of Maria Harkley, **State’s Exhibit 7**, Mr. Griffith exercises his right to cancel the transaction with Canary Tree Service by causing this letter to be delivered to Canary Tree Service in connection with service of this Complaint.

33. Upon information and belief, the demand for payment from Mr. Griffith was done with the knowledge and intent to charge an unreasonably excessive price under the circumstances for tree removal work that directly resulted from the emergency (Hurricane Florence’s landfall) that prompted the Governor’s declaration of a State of Emergency.

IV. The Dixon Home

34. During Hurricane Florence, Janet and Rick Dixon were staying at Janet’s mother’s home in Wilmington, North Carolina. On or about September 15, 2018, during Hurricane Florence’s landfall at Wilmington, the Dixons heard a tree fall on the house. Upon inspection, they discovered that two trees had fallen on the house, one on the front and one on the back.

35. While the storm continued, Mr. Dixon drove to their own house in Hampstead to see what if any damage had occurred there.

36. Later that morning, defendant Hartmann came uninvited to the door of Mrs. Dixon's mother's house, stated that he was the owner of Canary Tree Service, and asked if Mrs. Dixon wanted to have the trees removed from the house.

37. Mrs. Dixon was unable to reach her husband by cellphone, and in a somewhat panicked state she agreed to have Canary Tree Service do the tree work and for another company to cover the roof with a tarp for an additional fee. Although a price was not agreed to, Mrs. Dixon authorized defendant Hartmann to charge \$2,500.00 to her credit card for a down payment.

38. While Mr. Dixon was still away, the Canary Tree Service crew of five men arrived at about 11:00 a.m. and worked until about 5:00 p.m.

39. Using a bucket truck, crane, and two Bobcats, the crew took about one-and-a-half to two hours to remove the two trees that were on the house and haul the debris to the street.

40. They then removed two other trees—one in the back and one in the front—that were leaning toward the house, which took approximately four hours. For these trees not on the house, the crew only used chainsaws and the Bobcats.

41. When the work was done, defendant Hartmann presented Mrs. Dixon with a bill totaling \$14,000.00, and she charged the remaining \$11,500.00 to her credit card. (A copy of the bill is at **Attachment 1**, and bank records showing the credit charges are at **Attachment 5** to the Affidavit of Janet Dixon, **State's Exhibit 5**.)

42. The crew of five men working for about six hours equals a total of 30 man-hours for the tree work. The \$14,000.00 bill divided by 30 man-hours results in a rate of \$466.67 per man-hour. This charge was excessive. (Affidavit of Basil Camu, **State's Exhibit 6**)

43. Mrs. Dixon was billed separately for the tarp work the following day. (A copy of the tarp bill is at **Attachment 2** to Dixon's Affidavit, **State's Exhibit 5**.)

44. When Mr. Dixon returned at about 6:00 p.m., he became upset to learn the price of the tree work. He telephoned Canary Tree Service, and after several days finally got in touch with defendant Hartmann. Hartmann refused to budge on the total price of \$14,000.00 (which was paid in full), but he did agree to Mr. Dixon's demand that he issue a separate invoice in the amount of \$5,500.00 for removal of the two trees that were actually on the home. (A copy of that second invoice is at **Attachment 3** to Dixon's Affidavit, **State's Exhibit 5**.) Homeowner's insurance generally only covers tree removal if a tree is on a structure.

45. The Dixons submitted this second tree-work invoice, along with the tarping invoice, to the homeowner's insurer, and received insurance reimbursement of \$2,922.69. (A copy of that check is at **Attachment 4** to Dixon's Affidavit, **State's Exhibit 5**.)

46. The Dixons subsequently received a quote from MD Services & Remodeling, LLC, another Florida-based tree service company, to do all of the tree work for \$2,400.00. This quote was based on photographs of the trees and the work done that the Dixons provided to MD Services & Remodeling, LLC. (A copy of the quote is at **Attachment 6** to Dixon's Affidavit, **State's Exhibit 5**.)

47. The Dixons neither received a three-day right to cancel notice nor signed a three-day right to cancel waiver in connection with the above-described services. Through the letter at **Attachment 5** to the Affidavit of Maria Harkley, **State's Exhibit 7**, Mrs. Dixon exercises her right to cancel the transaction with Canary Tree Service by causing this letter to be delivered to Canary Tree Service in connection with service of this Complaint.

48. Upon information and belief, the demand for payment from the Dixons was done with the knowledge and intent to charge an unreasonably excessive price under the circumstances

for tree removal work that directly resulted from the emergency (i.e. Hurricane Florence's landfall) that prompted the Governor's declaration of a State of Emergency.

CLAIMS FOR RELIEF

CLAIM I

PRICE GOUGING

N.C. GEN. STAT. §§ 75-38 and 75-1.1

49. Defendants' demand to Mr. Romano for payment in the amount of \$5,000.00 for tree removal work was done with the knowledge and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

50. Defendants' demand to Mr. Heuer for payment in the amount of \$4,500.00 for tree removal work was done with the knowledge and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

51. Defendants' demand to John Griffith for payment of \$4,500.00 for tree removal work was done with the knowledge and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

52. Defendants' demand to the Dixons for payment of \$14,000.00 for tree removal work was done with the knowledge and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

53. Defendants' offer to remove Mr. Claffey's tree for \$750.00 was done with the knowledge and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1

CLAIM II
UNFAIR AND DECEPTIVE TRADE PRACTICES
N.C. GEN. STAT. § 75-1.1

54. Defendants' false representation that the first invoice to the Dixons for \$14,000 was only for removing the two trees that were on the house, when in fact it also covered non-insured work of removing other trees, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

55. Defendants' failure to provide Mr. Romano with a verbal and written three-day right to cancel notice as required by N.C. Gen. Stat. §14-401.13, or to obtain a written waiver of this right to cancel, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

56. Defendants' failure to provide Mr. Heuer with a verbal and written three-day right to cancel notice as required by N.C. Gen. Stat. §14-401.13, or to obtain a written waiver of this right to cancel, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

57. Defendants' failure to provide Mr. Griffith with a verbal and written three-day right to cancel notice as required by N.C. Gen. Stat. §14-401.13, or to obtain a written waiver of this right to cancel, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

58. Defendants' failure to provide Mrs. Dixon with a verbal and written three-day right to cancel notice as required by N.C. Gen. Stat. §14-401.13, or to obtain a written waiver of this

right to cancel, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

**REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION UNDER N.C. GEN. STAT. § 75-14**

59. In light of the evidence that defendants engaged in price gouging and unfair or deceptive practices, as set forth in this Complaint and supported by the attached affidavits, the State requests that defendants be enjoined immediately, and upon due notice and hearing be preliminarily enjoined, as set forth in detail in paragraphs 61 and 62 of this Complaint.

60. Unless defendants are restrained and enjoined, they will continue to irreparably harm the State by violating North Carolina law, to the detriment of the State and its citizens.

PRAYER FOR RELIEF

WHEREFORE, THE STATE PRAYS THE COURT for the following relief:

61. That defendants, together with their agents, employees, representatives, subcontractors, successors and assigns, and any persons acting in concert with them, be temporarily restrained, and upon due notice preliminarily enjoined, and at the conclusion of this action permanently enjoined, under N.C. Gen. Stat. § 75-14, from:

- i. charging or receiving payment for goods or services used as a direct result of an emergency with the knowledge and intent that the charge is an unreasonably excessive price under the circumstances, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1;
- ii. making any false or deceptive representation in connection with providing tree removal services, including but not limited to representing that an invoice is only for work involving trees that fell on a structure when in fact it covers trees not on a structure;

- iii. failing to ensure that all transactions and contracts initiated and executed anywhere other than defendants' business premises fully comply with written and verbal right-to-cancel disclosure requirements found in N.C. Gen. Stat. § 14-401.13;
- iv. directly or indirectly attempting to collect on any claimed debt for tree removal and related services provided in North Carolina on and after September 7, 2018;
- v. advertising, offering, soliciting, or entering into contracts, or receiving payment for any tree removal and related services in North Carolina;
- vi. performing or providing any tree removal and related services in North Carolina;
- vii. transferring, withdrawing, concealing, disposing, or encumbering any of defendants' assets without permission of the Court or written permission of the Attorney General.

62. That defendants be required, under N.C. Gen. Stat. § 75-14, to produce the following records no later than three days prior to the preliminary injunction hearing or within ten days of entry of a temporary restraining order, whichever is sooner:

- i. (a) A verified list of the names, addresses, phone numbers, and email addresses of all North Carolina consumers to whom defendants, or those acting under their direction or control or with their approval, have provided products or services since September 7, 2018, together with (b) all related invoices, bills, estimates, and/or bids sent to those consumers and/or their insurers, (c) an individualized accounting of all payments received from each such consumer and/or insurer, and (d) the names and addresses of all insurance policy issuers, policy numbers, and

claim numbers related to services provided by defendants to North Carolina consumers on or after September 7, 2018;

- ii. The name and address of every bank at which defendants maintain deposit, checking, or other accounts, along with the account number for each such account, a statement of the current balance in each such account, and a copy of the bank statement(s) for each such account that covers the period September 7, 2018 through April 1, 2019;
- iii. A current balance sheet and the most recent profit and loss statement for defendant Canary Date Sculpting Inc.;

63. That upon final adjudication of this cause, the terms of the Preliminary Injunction continue in the form of a Permanent Injunction, pursuant to N.C. Gen. Stat. § 75-14;

64. That upon final adjudication defendants be ordered, pursuant to N.C. Gen. Stat. § 75-15.1, to pay restitution to all consumers and insurers who suffered injury due to defendants' unlawful acts and practices set forth above;

65. That upon final adjudication defendants be ordered to disgorge all amounts they or their agents, employees, representatives, subcontractors, successors and assigns have received, or in the future do receive, in connection with the tree removal and related services set forth above, under N.C. Gen. Stat. § 75-14;

66. That upon final adjudication the Court, pursuant to N.C. Gen. Stat. § 75-15.1, cancel all express, implied or constructive contracts between defendants, acting as contractors or subcontractors, and the owners of the properties described above, including that the Court extinguish all statutory lien rights and all common law *quantum meruit* rights of defendants against all property owners and/or their insurers for tree removal and related services set forth above;

67. That upon final adjudication defendants be ordered to pay civil penalties of \$5,000.00 for each instance of price gouging and unfair and deceptive trade practices, pursuant to N.C. Gen. Stat. § 75-15.2;

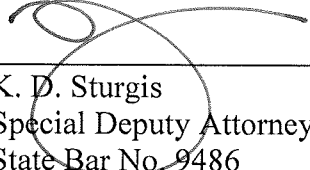
68. That upon final adjudication defendants be ordered to reimburse the State for attorneys' fees and litigation expenses in this action, pursuant to N.C. Gen. Stat. § 75-16.1;

69. That upon final adjudication costs of this action be taxed to defendants; and

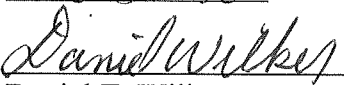
70. That the State be granted such other and further relief as to the Court deems just and appropriate.

This the 11th day of April, 2019.

JOSHUA H. STEIN
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